UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

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E. I. DUPONT DE NEMOURS AND COMPANY)
AND) Case No. 3-CA-27828
UNITED STEEL, PAPER AND FORESTRY,)
)
RUBBER, MANUFACTURING, ENERGY	
ALLIED-INDUSTRIAL AND SERVICE)
WORKERS INTERNATIONAL UNION)
)

EXCEPTIONS OF RESPONDENT E. I. DUPONT DE NEMOURS AND COMPANY TO THE DECISION OF ADMINISTRATIVE LAW JUDGE JEFFREY D. WEDEKIND

Pursuant to the Rules and Regulations of the National Labor Relations Board, as amended, Respondent, E.I. du Pont de Nemours and Company ("DuPont" or the "Company"), by the undersigned counsel, respectfully files the following Exceptions to the Decision and Order of Administrative Law Judge Jeffry D. Wedekind in the above-captioned case. DuPont is simultaneously filing with the Board a Brief in support of these Exceptions:

Exception 1: Respondent excepts to the Judge's finding that on October 13, 2009, Union representative Jim Briggs informed the Company that in the Union's view, any implementation of the announced BeneFlex plan changes "would be" illegal because the Union had "served notice that the contract was open." ALJD 3:36-37; 4:1. The implication that the Union did not believe, and therefore did not allege, as of October 13, 2009, that the Company

References to the Decision of Administrative Law Jeffrey D. Wedekind will be designated by "ALJD," followed by the cited page and line numbers.

had already acted unlawfully by announcing the BeneFlex changes is not supported by the record.

Exception 2: Respondent excepts to the Judge's failure to give sufficient weight to the Union's acknowledged willingness "to extend the contract (including its bargaining-waiver provisions) if the negotiations were not complete by December 9," notwithstanding "its concern about the announced 2010 BeneFlex changes." ALJD 4:12-14.

Exception 3: Respondent excepts to the Judge's finding that "the Union proposed 30 days notice to strike rather than to terminate the contract." ALJD 5 n. 8 (cont.).

Exception 4: Respondent excepts to the Judge's failure to give sufficient weight to his finding that "Idzik's contemporaneous notes of the [July 21, 2010] phone calls supports his testimony that Briggs did not specifically make statements," claiming that Briggs told Idzik that the Union had no interest in a contract extension. ALJD 8:39-40; 8: 27-32.

Exception 5: Respondent excepts to the Judge's finding that the Union Representative Briggs' reference to the "open" contract during his July 21, 2010 telephone conversations with Mr. Idzik meant the contract was "terminated." ALJD 8:43-46; 9:5-6. This finding is contrary to the weight of the record evidence.

Exception 6: Respondent excepts to the Judge's finding that the Company's references to an "open" contract signified that the Company believed the 1983 contract had terminated.

ALJD 9:5-13. This finding is contrary to the record evidence.

Exception 7: Respondent excepts to the Judge's implication that the Union believed it "would only have 'leverage' in the negotiations if the 1983 contract and its waiver provision permitting annual unilateral changes to BeneFlex plan had expired." ALJD 9:15-16. This finding is contrary to the record evidence.

Exception 8: Respondent excepts to the Judge's finding that "it would obviously make no sense to extend the contract at that point if the Union wanted to use the lack of a contract as leverage to get a deal done before the next, upcoming round of BeneFlex changes." ALJD 9:15-16. This finding is contrary to the record evidence.

Exception 9: Respondent excepts to the Judge's finding that "Briggs did effectively, if not expressly, indicate to Idzik on July 21, [2010] that the Union believed the contract had expired on April 30 and would not agree to another extension." ALJD 9:21-23. This finding is contrary to the evidence.

Exception 10: Respondent excepts to the Judge's finding that "although Briggs used the term 'open contract' in October 2009, before the December 9 contract-expiration date, he did so in objecting to any implementation of the proposed BeneFlex changes for the following year, which would not have occurred until January 1, 2010, after the December 9 expiration." ALJD 9, n. 14. This finding is contrary to the record evidence.

Exception 11: Respondent excepts to the Judge's failure to give sufficient weight to his finding that on September 27, 2010, Briggs stated that the Company's announced changes to BeneFlex "were 'illegal' because the parties were in 'overall contract bargaining." ALJD 10:21-22.

Exception 12: Respondent excepts to the Judge's finding that the 2009 Contract Extension MOA is ambiguous. ALJD 11:24. This finding is contrary to the record evidence.

Exception 13: Respondent excepts to the Judge's failure to give sufficient weight to his finding that, "on its face," the phrase "This agreement" in the sentence "This agreement shall continue in full force and effect until terminated by either party with 60 calendar days advance

notice in writing except in no case will the COMPANY or the UNION strike or lockout prior to April 30, 2010," refers to the 2009 Contract Extension MOA. ALJD 12:10-14;12:5-7.

Exception 14: Respondent excepts to the Judge's failure to give sufficient weight to his finding that "Contrary to the Union's contention, 'This agreement' cannot reasonably be interpreted on its face only to refer only to the no-strike or lockout agreement, which is not mentioned until later in the sentence as an 'except[ion]." ALJD 12:23-25.

Exception 15: Respondent excepts to the Judge's finding that the sentence in the 2009 Contract Extension MOA that read, "This agreement shall continue in full force and effect until terminated by either party with 60 calendar days advance notice in writing except in no case will the COMPANY or the UNION strike or lockout prior to April 30, 2010," does not clearly address whether the contract would continue beyond April 30 absent 60 days notice. ALJD 12:29-30; 12:5-7.

Exception 16: Respondent excepts to the Judge's finding that the listed "except[ion] [in the 2009 Contract Extension MOA], proving that 'in no case' will either party strike or lockout prior to April 30, 2010, suggests that the provision was intended to address whether and how the contract extension could be terminated prior to April 30, 2010, rather than after." ALJD 12:30-34. This finding is contrary to the record evidence.

Exception 17: Respondent excepts to the Judge's finding that the "last two sentences [in the MOA] on their face indicate that the 60-day notice provision applies to terminating the contract extension agreement prior to April 30, 2010, [and] they do not address whether the contract would continue to rollover after April 20, 2010, absent 60 days notice." ALJD 13:26-34. This finding is contrary to the record evidence.

Exception 18: Respondent excepts to the Judge's finding that "there is substantial extrinsic evidence supporting the General Counsel's and the Union's position that both parties intended the contract to terminate or expire automatically on April 30, 2010 without the necessity of further notice." ALJD 14:11-13. This finding is contrary to the weight of the record evidence.

Exception 19: Respondent excepts to the Judge's decision to the extent it credits Union representative Briggs' testimony "that it would [have made] little or no sense for the Union to agree to an indefinite extension of the contract." ALJD 14:13-16.

Exception 20: Respondent excepts to the Judge's failure to give sufficient weight to his finding that the Union's position "is significantly undercut by the fact that the Union actually agreed to extend the contract to April 30, 2010, notwithstanding its objection to the Company's proposed January 1, 2010 changes." ALJD 14, n. 23.

Exception 21: Respondent excepts to the Judge's failure to give sufficient weight to his finding that the Union would still have had plenty of time after April 30 to give 60 day's notice of termination if it wished to do so before the 2011 BeneFlex changes were announced and implemented in September/October 2010 and January 2011, respectively. ALJD 14, n. 23.

Exception 22: Respondent excepts to the Judge's finding that "it was unnecessary" to extend the no strike/lockout agreement in the February 2010 LSE agreement, "if the MOA, including the no-strike or lockout agreement rolled over and continued in effect absent such notice." ALJD 14:40; 15:5-9. This finding is contrary to the record evidence.

Exception 23: Respondent excepts to the Judge's finding that "Union representative Briggs effectively expressed the Union's belief that the contract had expired as early as July 21,

in his telephone conversation with Idzik." ALJD 15:27-29. This implication is contrary to record evidence.

Exception 24: Respondent excepts to the Judge's finding that "the Company's limited response to Brigg's statements on September 13 and 27 [2010] indicates that the Company did not believe the contract was still in effect either." ALJD 15 n. 24. This finding is contrary to record evidence.

Exception 25: Respondent excepts to the Judge's conclusion that "most obvious and natural response" to Briggs' claim that the Company's announcement of 2011 BeneFlex changes was illegal "was to cite to the contract and/or MOA extending it indefinitely absent 60 days notice." ALJD 16:5-7.

Exception 26: Respondent excepts to the Judge's finding that "there is little extrinsic evidence indicating that the parties intended the contract or its extension to rollover or continue indefinitely absent 60 days notice." ALJD 16:11-12. This finding is contrary to the record evidence.

Exception 27: Respondent excepts to the Judge's implication that Company communications issued on November 13 and 16, 2009, prior to the parties' agreement on the contract extension and the drafting of the 2009 Contract Extension MOA, are inconsistent with a continuation of the parties' contract beyond April 30, 2010 absent 60-days written notice to terminate it. ALJD 16:25-30. This finding is contrary to the record evidence.

Exception 28: Respondent excepts to the Judge's finding that Ms. Sarazin's reference to a 60-day opener at the November 17, 2009 meeting was simply a misstatement. ALJD 16:34-36.

Exception 29: Respondent excepts to the Judge's failure to give sufficient weight to "the undisputed fact that, unlike prior to the December 9, 2009 expiration date, there was no discussion of an extension prior to the April 30, 2010 date." ALJD 16:40-41.

Exception 30: Respondent excepts to the Judge's finding that "the lack of any discussion prior to April 30 of the contract's upcoming expiration or possible further extension could . . . reasonably indicate that neither party had any strong objection to the contract automatically expiring on that date." ALJD 17:5-8. This finding is contrary to the record evidence.

Exception 31: Respondent excepts to the Judge's failure to give sufficient weight to his finding that "Briggs' admission that his pretrial NLRB affidavit failed to mention that the MOA extended the contract." ALJD 17 n. 28.

Exception 32: Respondent excepts to the Judge's conclusion that "the General Counsel has established, by a preponderance of the evidence that the parties intended the contract extension to automatically expire on April 30, 2010, without the necessity of further notice or termination. ALJD 17:26-28. This conclusion is contrary to the weight of the record evidence.

Exception 33: Respondent excepts to the Judge's conclusion that "the Company's subsequent, unilateral implementation of its announced changes to the BeneFlex plan on January 1, 2011 violated its duty to bargain." ALJD 17:29-30; 18:5. This conclusion is contrary to the weight of the record evidence and is contrary to controlling law.

Exception 34: Respondent excepts to the Judge's conclusion that the 2011 BeneFlex changes were unlawful, even though the changes were consistent with past practice, consistent with the terms of the BeneFlex Flexible Benefits Plan, and, therefore, as DuPont contends, did not constitute a unilateral change to the status quo. ALJD 18:5-12.

Exception 35: Respondent excepts to the Judge's failure to address the undisputed fact that in 2006 the Union filed an unfair labor practice charge regarding the Company's announcement of BeneFlex changes, taking the position that the Company was not authorized to make the changes even though the parties' 1983 collective bargaining agreement containing the Industrial Plans and Practices provision was in full force and effect.

Exception 36: Respondent excepts to the Judge failure to give sufficient weight to the undisputed fact that the Union's lead negotiator, Jim Briggs, could not describe accurately the circumstances surrounding the alleged termination of the 1983 CBA when he proved his sworn affidavit in support of the Union's charge, despite the alleged contract expiration being basis for the charge itself.

Exception 37: Respondent excepts to Paragraph 3 of the Judge's Conclusion of Law.

ALJD 18:44-46. This Paragraph is contrary to record evidence and contrary to controlling law.

Exception 38: Respondent excepts to the Judge's Conclusions of Law to the extent they conclude that the Company committed an unfair labor practice. ALJD 18:14-18.

Exception 39: Respondent excepts to the Judge's proposed remedy in its entirety. ALJD 18:20-36. This conclusion is without record support.

Respectfully submitted,

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March 6, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 6th day of March 2012, I caused a true and accurate copy of DuPont's Exceptions to Decision of Administrative Law Judge Jeffrey D. Wedekind and Brief In Support thereof to be served by electronic mail on the following parties:

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